

Brigham Young University Law School
BYU Law Digital Commons

Utah Supreme Court Briefs (1965 –)

1984

The State of Utah v. Richard Louis Smith : Brief of Respondent

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. David L. Wilkinsons and J. Stephen Mikita; Attorneys for Respondent

Recommended Citation

Brief of Respondent, *Utah v. Smith*, No. 19103 (1984).
https://digitalcommons.law.byu.edu/uofu_sc2/4660

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Respondent, :
-v- : Case No. 19103
RICHARD LOUIS SMITH, :
Defendant-Appellant. :

BRIEF OF RESPONDENT

APPEAL FROM CONVICTION OF THEFT BY DECEPTION,
A CLASS A MISDEMEANOR, IN VIOLATION OF UTAH
CODE ANN. § 76-6-405 (1953), AND THEFT,
RECEIVING STOLEN PROPERTY, A SECOND DEGREE
FELONY, IN VIOLATION OF UTAH CODE ANN.
§ 76-6-408 (1953), IN THE THIRD JUDICIAL
DISTRICT COURT, IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH, THE HONORABLE ERNEST F. BALDWIN,
JR., JUDGE, PRESIDING.

DAVID L. WILKINSON
Attorney General
J. STEPHEN MIKITA
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

MANNY GARCIA
Salt Lake Legal Defender Association
333 South 200 East
Salt Lake City, Utah 84111

Attorney for Appellant

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	2
SUMMARY OF ARGUMENTS	3
ARGUMENT	i
POINT I THE TRIAL COURT PROPERLY EXCLUDED EVIDENCE OF DEFENDANT'S PERCEPTIONS REGARDING THE POWER OF HIS PAROLE OFFICER AND THE EFFECT OF INCARCERATION ON HIS HEALTH	3
POINT II IF THE COURT DETERMINES THE TRIAL JUDGE ERRED IN EXCLUDING THE EVIDENCE, THE ERROR WAS HARMLESS	5

TABLE OF AUTHORITIES

CASES CITED

<u>Hamling v. United States</u> , 418 U.S. 87 (1973)	4
<u>Hill v. Hartog</u> , Utah, 658 P.2d 1206 (1983)	6
<u>State v. Jolley</u> , Utah, 571 P.2d 582 (1977)	6
<u>State v. Kozik</u> , Utah, 688 P.2d 459 (1984)	5
<u>State v. Miller</u> , Utah, 677 P.2d 1129 (1984)	4

STATUTES CITED

Utah Code Ann. § 76-6-405	1, 6
Utah Code Ann. § 76-6-408	1, 6

RULES CITED

Utah Rules of Evidence, Rule 5 (July 1971)	6
Utah Rules of Evidence, Rule 403 (August 1983) . .	5

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Respondent, :
-v- : Case No. 19103
RICHARD LOUIS SMITH, :
Defendant-Appellant. :

BRIEF OF RESPONDENT

STATEMENT OF ISSUES

Whether the trial court erred in excluding evidence of defendant's perception regarding the power of his parole officer and the effect of incarceration on his health, as it related to defendant's mens rea at the time he pawned the stolen property.

If the trial judge erroneously excluded evidence, whether that exclusion constituted reversible error.

STATEMENT OF THE CASE

Defendant, Richard Louis Smith, was charged with Theft, Receiving Stolen Property, a second degree felony, in violation of Utah Code Ann. § 76-6-408 (1953), as amended and Theft by Deception, a Class A misdemeanor in violation of Utah Code Ann. § 76-6-405 (1953), as amended.

Defendant was convicted of Theft by Receiving and Theft by Deception, in a jury trial held February 14 and 15, 1983, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Ernest F. Baldwin, Jr., Judge, presiding. Defendant was sentenced by Judge Baldwin on March 4, 1983, to the Utah State Prison for the indefinite term of 1-15

years on the charge of Theft by Receiving Stolen Property and one year on the charge of Theft by Deception, the sentences to run concurrently.

STATEMENT OF FACTS

On or about June 7, 1982, the residence of Steven Page was burglarized (T. 9-10). Among the items stolen were two rifles (T. 7, 10). On the same day, defendant pawned one rifle at Pawnee Loans and a second rifle at Sportsman's Discount (T. 15-17, 56-58, 103). Defendant misrepresented ownership of the rifles at both places (T. 26-27, 59). The rifles defendant pawned were later identified as the same rifles taken from the residence of Steven Page (T. 7-8, 15-16, 56-57).

Ron Peterson, defendant's nephew, who had admitted involvement in the burglary, testified that defendant had taken the guns (February 15, T. 10-11). Defendant told detective Paul Lamont that he knew the guns were stolen at the time he had pawned them, but denied involvement in the burglary (T. 74-75).

At trial, defendant testified that he did not know the guns were stolen (T. 118-119). The defense attempted to present evidence as to defendant's perception of the power of his parole officer (T. 109-110). The State objected on relevancy grounds (T. 110). The Court sustained the objection as to defendant's beliefs (T. 110). The trial judge also stated that the objection would be sustained regarding the powers of the parole officer on grounds that no foundation had been laid (T. 110). The defense also tried to present evidence as to the effect of jail on defendant's health (T. 111). The State objected on relevancy grounds and the court sustained (T. 111).

SUMMARY OF ARGUMENTS

The evidence excluded by the trial judge was irrelevant in determining the state of mind of defendant at the time he pawned the stolen property. If admitted the evidence would have confused the issues and misled the jury.

If the trial judge erred in excluding the evidence, it was harmless error. Defendant was allowed to testify regarding his state of mind at the time he pawned the rifles. Defendant admitted to a police officer that he knew the guns were stolen when he pawned them and his nephew testified that defendant had taken the guns. Therefore, if the evidence was erroneously excluded, its admission would not have had a substantial influence in bringing about a different verdict.

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY EXCLUDED EVIDENCE
OF DEFENDANT'S PERCEPTIONS REGARDING THE
POWER OF HIS PAROLE OFFICER AND THE EFFECT
OF INCARCERATION ON HIS HEALTH.

Defendant argues that the trial judge improperly excluded evidence under Utah Rules of Evidence, Rules 401-402 (Supp. 1983) and that such exclusion constituted reversible error. The excluded evidence consisted of defendant's belief as to the power of his parole officer to put him in jail and the effect incarceration had had on defendant's health. The trial court, however, properly excluded the evidence based upon its determination that the evidence was irrelevant.

When reviewing admissibility of evidence issues on appeal, the trial court's decision will only be overturned if

there has been a substantial abuse of discretion. The United States Supreme Court has stated that appellate courts should "leave rulings as to the illuminating relevance of testimony largely to the discretion of the trial court that hears the evidence." Hamling v. United States, 418 U.S. 87, 125 (1973).

The excluded evidence was irrelevant because it was not probative to the issue of mens rea required under the statute. Whether defendant knew or probably should have known that the rifles were stolen had no relation whatsoever to his perceptions of the power of his parole officer or to the effect of incarceration on his health. Defendant was allowed to testify as to his conduct and state of mind at the time he pawned the rifles, therefore the mens rea issue was properly placed before the jury.

This Court recently held that when specific intent is an element of the crime charged, evidence should be admitted which would tend to disprove the existence of a specific intent. State v. Miller, Utah, 677 P.2d 1129, 1131 (1984). However, Miller involved a conspiracy charge and dealt with the exclusion of expert testimony relating to the state of mind of defendant at the time he engaged in the alleged crime. The present case involves perceptions of defendant as to the powers of his parole officer and the effect of incarceration on his health which are unrelated to his state of mind at the time he pawned the stolen property. The excluded evidence would not in any way "tend to disprove the existence of a specific intent."

POINT II

IF THIS COURT DETERMINES THE TRIAL JUDGE
ERRED IN EXCLUDING THE EVIDENCE, THE
ERROR WAS HARMLESS.

When considering the effect of error, this court has
applied the following standard of review:

We do not upset the verdict of jury merely
because some error or irregularity may have
occurred, but will do so only if it is
something substantial and prejudicial in
the sense that there is a reasonable
likelihood that in its absence there
would have been a different result.

State v. Kozik, Utah, 688 P.2d 459, 461 (1984).

Defendant's contention that the exclusion of evidence
by the trial judge constituted reversible error is without merit.
Defendant attempted to introduce evidence which would have had
the effect of confusing the issues and misleading the jury. The
trial judge is allowed wide discretion in excluding otherwise
relevant evidence according to Rule 403, Utah Rules of Evidence
(August 1983) which provides:

Although relevant, evidence may be
excluded if its probative value is
substantially outweighed by the danger
of unfair prejudice, confusion of the
issues, or misleading the jury, or by
considerations of undue delay, waste
of time, or needless presentation of
cumulative evidence.

(emphasis added)

The trial judge properly exercised his discretion in
excluding evidence which would not have aided the jury and which
was, at best, remotely relevant. Defendant's perception of the
powers of his parole officer and the effect of incarceration on
his health was irrelevant in determining defendant's state of

mind at the time he pawned the stolen property. This court has held that intent required to support a conviction for theft can be inferred by defendant's conduct and the testimony of witnesses. State v. Jolley, Utah, 571 P.2d 582, 585 (1977). Defendant's admission to detective Paul Lamont that he knew the rifles were stolen when he pawned them and the testimony by defendant's nephew that defendant had taken the guns demonstrated that defendant had the requisite mens rea to support the convictions under Utah Code Ann. §§ 76-6-408 and 76-6-405.

In a case involving erroneous exclusion of evidence, this Court recently applied Rule 5, Utah Rules of Evidence (July 1971) and held that erroneous exclusion of evidence is not grounds for reversal unless it appears that the excluded evidence would probably have had a substantial influence in bringing about a different verdict. Hill v. Hartog, Utah, 658 P.2d 1206 (1983). The excluded evidence regarding unrelated perceptions of the defendant, if admissible, would not have had a substantial influence in bringing about a different verdict. Defendant was allowed to testify as to his conduct and state of mind at the time he pawned the rifles, therefore sufficient evidence was presented to place the issue of mens rea before the jury.

If the trial judge committed error in excluding evidence, it was certainly not significant enough to warrant a reversal.

CONCLUSION

Based on the foregoing, the trial judge properly excluded the evidence on relevancy grounds. If the evidence is determined relevant, its erroneous exclusion was harmless error.

DATED this 13th day of February, 1985.

DAVID L. WILKINSON
Attorney General


STEPHEN MIKITA
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that I mailed four true and exact copies of the foregoing Brief, postage prepaid, to Manny Garcia, attorney for appellant, Salt Lake Legal Defender Association, 333 South 200 East, Salt Lake City, Utah 84111.


